

Response to Items 1 and 2 on Attachments A and B

The committees had several suggestions on the role of the Natural Resources Board in approving proposals to prohibit NBOAs and the process the Board should use to take public testimony concerning those proposals. The committee was also concerned about the time frame for involving the Board on these matters. The Department made changes to the rule to reflect the general recommendations of the committee. The section of the rule that involves Natural Resources Board review and public testimony to the Board now reads:

s. 52.04 (2) (e)) The department shall submit to the natural resources board at each regularly scheduled meeting a report that summarizes determinations made under par (d). The report shall contain the information made available to the public under s. NR 52.04 (1), public comments, including any objections, gathered under s. NR 52.04 (2), and the department's written determination made under par. (d). The department shall deliver the report to the natural resource board and make the information available to the public over the internet at least five working days preceding the next regularly scheduled meeting of the board. The natural resources board shall allow public participation to receive public testimony regarding the department's determinations and vote to ratify prohibitions on non-department land that appear on the monthly report. If the timeframe for natural resources board ratification will jeopardize a purchase closing the department may award the stewardship program grant and the transaction may close. The natural resources board will vote to ratify the determination at its next scheduled meeting.

Response to Item 3 on Attachment A

The committees asked that the Department modify the rule to ensure that game and unprotected non-game species are not considered unique plant and animal communities. After consultation with Natural Areas staff the Department determined that there could be certain individual species of unprotected non-game plants or animals that could meet the definition of "unique plant and animal community" contained in the rule. For example, certain bat species might meet this definition. Consequently the Department did not add language relating to unprotected non-game species to the rule. The Department did add language to the rule addressing game species. That section of the rule now reads:

s. 52.02 (12)) "Unique animal or plant community" means a natural community composed of different plant and animal species, along with their associated geological and archaeological features, that exist together in a specific area, time and habitat. A unique animal or plant community is one identified as endangered, threatened, rare or ecologically sensitive. A unique plant or animal community may also be critical species habitat or an ecological reference area. The sources for identifying unique animal and plant communities include reports or databases, such as the natural heritage inventory, wildlife action plan, regional planning commission reports or other publications routinely referenced by conservation biologists. Individual game species shall not be considered as unique animal species for purposes of this chapter.

Response to Item 4 on Attachment A

The committees requested that the Department delete s. 52.05 (1) (c) (2) and the Department did delete that section of the rule. That section previously read as follows:

s. 52.05 (1) (c) (2). The NBOAs available at the location of the acquisition at the time of purchase or that existed previously, if any.

Response to Item 5 on Attachment A

The committees suggested that separate donated properties used as match for a Stewardship grant should not be subject to NR 52. The Department agreed and made the following addition to the rule to reflect this change:

s. 52.03 (3) (5) Contributions of separate property used as sponsor match under ch. NR 51., subch.1., are not subject to this chapter.

Response to Item 6 on Attachment A

The committees suggested that NBOAs located nearby a property being purchased with Stewardship funds should not be considered as a factor when making a determination to prohibit an NBOA. In response the rule was modified to take into account only those activities immediately adjacent to a property being proposed for purchase. This section of the rule now reads:

s. 52.05 (1) (c) (4). The size, shape and location of the property as well as surrounding land uses, including the use of public lands immediately adjacent to the property which may or may not have been funded with stewardship funds. The use of adjacent lands shall not be used as the sole factor in making a determination to prohibit an NBOA to accommodate usership patterns.

Response to Item 7 on Attachment A

The committees asked the Department to delete the word potential in s. 52.05 (1) (a) (3). In response to the committee's request the Department did delete that word. This section of the rule now reads:

s. 52.05 (1) (a) (3). User conflicts that may create public safety issues and impact one or more NBOAs on the property.

Response to Item 8 on Attachment A

The committees asked that the Department modify the rule by requiring any organization seeking stewardship funds to disclose in their grant application any organizational policies against hunting, fishing or trapping. In response to that request the rule now reads:

s. 52.03 (3) (6) An organization with an identified policy prohibiting or restricting one or more NBOAs must comply with the provisions of this chapter regardless of the organization's policies.

Response to Item 9 on Attachment A

The committee asked that the use of adjacent land not be considered as the sole factor in evaluating any proposal to prohibit an NBOA. The Department agreed to this and that section of the rule now reads:

s. 52.05 (1) (c) (4). The size, shape and location of the property as well as surrounding land uses, including the use of public lands immediately adjacent to the property which may or

may not have been funded with stewardship funds. The use of adjacent lands shall not be used as the sole factor in making a determination to prohibit an NBOA to accommodate usership patterns.

Response to Item 10 on Attachment A

The committees suggested that the Department modify the rule to fully take into account the public rights protected by the Public Trust Doctrine. They also asked that the Department review and clarify the Department's authority to adopt state regulations on waters purchased with Stewardship funds. On the second point, the Department will convene a group including representatives from various outdoor constituencies and Department staff to review the Department's authorities over water bodies. Regarding the Public Trust Doctrine the rule now reads:

s. 52.03 (4) Public use of lands purchased in whole or in part with funding from the stewardship program under s. 23.0917, Stats., shall be subject to all applicable federal, state and local laws; including but not limited to the public trust doctrine.

Response to Item 11 on Attachment A

The committees asked the Department to modify the rule to be sure that the appropriate resource management professionals at the local, regional and statewide level are involved in the process for making determinations to prohibit NBOAs. In compliance with this request the rule now reads:

s. 52.04 (1) (d) The department's initial assessment of the proposal to prohibit the NBOA pursuant to ss. 23.0916(2) (b) or (3) (b), Stats. The department's assessment shall include an evaluation of s. NR 52.05 (1) (a) through (c) and shall involve the department's resource management professionals at the local, regional and statewide level.

Response to Item 12 on Attachment A

The committees asked the Department to delete. s. 52.04 (2) (d). The Department complied with this request. That language previously read:

s. 52.04 (2) (d) The department may extend the 15 business day department evaluation period in par. (b), to further the purpose of s. 23.0916, Stats., when such extension will not affect the purchase closing or acquisition deadline.

Response to Item 13 on Attachment A

The committees asked the Department to delete s. 52.04 (2) (g). The Department complied with that request. That section of the rule previously read:

s. 52.04 (2) (g) The department's determination made under par. (e) is subject to appeal rights under ss. 227.42 and 227.52, Stats.

Response to Item 14 on Attachment A

The committees suggested that certain transactions within municipal boundaries less than 5 acres in size should not be subject to the rule. The Department added language to the rule to reflect the committees' suggestion. That section of the rule now reads:

s. 52.05 1 (a) (5). A proposal to prohibit one or more NBOAs on a parcel 5 acres or smaller, located within the boundaries of cities and villages, shall be determined to be necessary in order to protect public safety and shall not be subject to s. NR 52.04 unless:

a. The parcel is adjacent to a parcel where the NBOAs to be prohibited already exist.

b. The parcel is adjacent to a public waterway.

Other Changes to the Rule

In addition, there were some basic housekeeping changes made to the rule to renumber or delete certain sections that no longer pertain as a result of the above changes.